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Attorney(s) for: Defendants Ashland Gun Club, Partier,
Longiotti, Georgeson, Tuneberg, Winner, Renteria and
Wisdom

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Cathy DeForest, Leon Pyle and Edward
Kerwin,

Plaintiffs,

v.

City of Ashland (a municipal subdivision of the
State of Oregon) Ashland Gun Club, Inc., (a
domestic non-profit corporation) and Chuck
Partier, Bill Longiotti, Rick Georgeson, Lee
Tuneberg, Mel Winner, Raymond Renteria and
Jerry Wisdom (board members the Ashland
Gun Club Inc.), as individuals,

Defendants.

Case No. 11-3159-CL

ANSWER TO COMPLAINT ON
BEHALF OF ASHLAND GUN CLUB,
INC., CHUCK PARTIER, BILL
LONGIOTTI, RICK GEORGESON, LEE
TUNEBERG, MEL WINNER,
RAYMOND RENTERIA and JERRY
WISDOM

(Jury Trial Demanded)

Comes now, answering Defendants Ashland Gun Club, Inc., Chuck Partier, Bill

Longiotti, Rick Georgeson, Lee Tuneberg, Mel Winner, Raymond Renteria and Jerry Wisdom by

and through their counsel and by way of answer to Plaintiffs' complaint, admits, denies and alleges as follows:

1.

This is merely a statement of statutes under which Plaintiffs' purport to assert their claims and a summary of claims elsewhere asserted and therefore answering Defendants neither admit nor deny.

2.

Admit that the City of Ashland leases land to Ashland Gun Club. Otherwise answering Defendants are currently without sufficient information and therefore deny the same.

3.

Deny.

4.

Deny.

5.

Deny.

6.

Deny.

7.

Admit that the Court has subject matter jurisdiction over the Federal claims but deny the balance of paragraph 7.

8.

Admit that there was a notice sent dated August 29, 2011 and otherwise are without sufficient information to admit or deny the balance and therefore deny the same.

9.

Admit that more than 60 days have passed since August 29, 2011 and admit that answering Defendants have no knowledge that EPA or DEQ has commenced or is diligently prosecuting any civil or criminal action against answering Defendants and otherwise deny.

10.

Deny.

11.

Admit that there was a notice sent dated August 29, 2011 and otherwise are without sufficient information to admit or deny the balance and therefore deny the same.

12.

Admit that more than 60 days have passed since August 29, 2011 and admit that answering Defendants have no knowledge that EPA or DEQ has commenced or is diligently prosecuting any civil or criminal action against answering Defendants and otherwise deny.

13.

Deny.

14.

Admit that there was a notice sent dated August 29, 2011 and otherwise are without sufficient information to admit or deny the balance and therefore deny the same.

15.

Admit that more than 60 days have passed since August 29, 2011 and admit that answering Defendants have no knowledge that EPA or DEQ has commenced or is diligently prosecuting any civil or criminal action against answering Defendants and otherwise deny.

///

16.

Deny.

17.

Deny except to the extent that the Court has jurisdiction in which case answering
Defendants admit that venue lies in the District of Oregon.

18.

Admit.

19.

Deny.

20.

Deny.

21.

Deny.

22.

Admit.

23.

Deny.

24.

Deny.

25.

Admit.

26.

Deny.

27.

Deny.

28.

Admit that City of Ashland leases some land to Ashland Gun Club; otherwise is without sufficient information or the allegations are not directed to answering Defendants and therefore deny the same.

29.

Admit that Ashland Gun Club leases land from City of Ashland, otherwise is currently without sufficient information and therefore denies.

30.

Admit that Plaintiffs are suing such individuals, admit that such individuals were formerly board members but expressly deny that any suit against them is proper, lawful, or appropriate.

31.

Admit.

32.

Admit that shooting of some kind has taken place by the Gun Club's members on the land it leases from the City of Ashland for in excess of 40 years.

33.

Admit that Emigrant Creek flows in a westerly direction, otherwise is without sufficient information at this time to admit or deny and therefore denies.

34.

Admit.

35.

Deny to the extent that Plaintiffs are implying that any of the munitions discharged by answering Defendants actually comes into contact with Emigrant Creek. Answering Defendants admit that some of the ranges may discharge munitions in the general direction of Emigrant Creek but affirmatively allege that none of the munitions reach Emigrant Creek.

36.

Deny.

37.

Admit that the shotgun range includes a clay pigeon range, otherwise deny.

38.

Deny.

39.

Deny.

40.

Deny.

41.

Admit that answering Defendants do not have an NPDES permit. Answering Defendants affirmatively allege that to their knowledge, no such permit is required under the circumstances at issue.

42.

Deny.

43.

Deny.

44.

Deny.

45.

Deny.

46.

Deny.

47.

Deny.

48.

Deny.

49.

Deny.

50.

Deny.

51.

Deny.

52.

Deny.

53.

Deny.

54.

Deny.

///

55.

Deny.

56.

Deny.

57.

Admit that answering Defendants did not obtain a fill permit but affirmatively allege that none was required nor did answering Defendants engage in any activity as alleged or if any such activity was engaged in, it was not in violation of any law nor would it require any permit.

58.

Deny.

59.

Deny.

60.

Deny.

61.

Deny.

62.

Deny.

63.

Deny.

64.

Deny.

///

65.

Deny.

66.

Admit that Defendant Ashland Gun Club has operated a shooting range, but otherwise deny the balance of paragraph 66.

67.

Deny.

68.

Deny.

69.

Deny.

70.

Deny.

71.

Deny.

72.

Deny.

73.

Admit and deny as specifically answered above.

74.

This allegation is a summary of law from Plaintiffs' perspective and accordingly answering Defendants neither admit nor deny.

///

75.

This allegation is a summary of law from Plaintiffs' perspective and accordingly answering Defendants neither admit nor deny.

76.

Deny.

77.

Answering Defendants herein admit and deny as alleged above.

78.

This allegation is a summary of law from Plaintiffs' perspective and accordingly answering Defendants neither admit nor deny.

79.

Deny.

80.

Answering Defendants admit and deny as alleged above.

81.

This allegation is a summary of law from Plaintiffs' perspective and accordingly answering Defendants neither admit nor deny.

82.

Admit that answering Defendants do not possess a permit to take any threatened Coho salmon but affirmatively allege that no such take has occurred.

83.

Deny.

84.

Deny.

85.

Answering Defendants admit and deny as alleged above.

86.

This allegation is a summary of law from Plaintiffs' perspective and accordingly answering Defendants neither admit nor deny.

87.

This allegation is a summary of law from Plaintiffs' perspective and accordingly answering Defendants neither admit nor deny.

88.

Deny.

89.

Admit and deny as alleged above.

90.

Deny.

91.

Admit and deny as alleged above.

92.

Deny.

93.

Admit and deny as alleged above.

///

94.

Deny.

95.

Admit and deny as alleged above.

96.

Deny.

97.

Admit and deny as alleged above.

98.

Deny.

BY WAY OF FIRST AFFIRMATIVE DEFENSE, answering Defendants herein
allege:

99.

Plaintiffs' complaint should be dismissed due to insufficient process.

BY WAY OF SECOND AFFIRMATIVE DEFENSE, answering Defendants herein
allege:

100.

Plaintiffs' complaint should be dismissed due to insufficient service of process.

Answering Defendants have repeatedly asked Plaintiffs' counsel for copies of proofs of service but for some reason, Plaintiffs' counsel has refused to provide the same and thus the defense is interposed for preservation purposes.

BY WAY OF THIRD AFFIRMATIVE DEFENSE, answering Defendants herein
allege:

101.

This court lacks subject matter jurisdiction as to the claims presented because the second amendment of the U.S. Constitution grants plenary authority to the states over matters controlling the exercise of the state's militia and therefore Federal environmental laws are inapplicable to and unenforceable against answering Defendants herein.

BY WAY OF FOURTH AFFIRMATIVE DEFENSE, answering Defendants herein allege:

102.

Plaintiffs' claims, to the extent they are premised on or assert nuisance, are barred in that Plaintiffs came to the nuisance. Plaintiffs had either prior, actual or constructive knowledge of the nuisance.

BY WAY OF FIFTH AFFIRMATIVE DEFENSE, answering Defendants herein allege:

103.

Plaintiffs' nuisance claims, to the extent they assert any claim premised on noise or noise pollution, are barred by ORS 467.131 and/or 467.133.

BY WAY OF SIXTH AFFIRMATIVE DEFENSE, answering Defendants herein allege:

104.

Plaintiffs' nuisance claims are barred in whole or in part by Plaintiffs' contributory negligence.

BY WAY OF SEVENTH AFFIRMATIVE DEFENSE, answering Defendants herein allege:

105.

To the extent that Plaintiffs contend that answering Defendants have committed any trespass on any of Plaintiffs' property, such claims are barred in that answering Defendants have obtained a prescriptive easement to conduct such activity. Notwithstanding the foregoing allegations, answering Defendants explicitly deny that any of their discharged munitions enter upon Plaintiffs' property.

BY WAY OF EIGHTH AFFIRMATIVE DEFENSE, answering Defendants herein allege:

106.

Plaintiffs' claims are barred by the doctrine of unclean hands to the extent that any equitable relief sought in that Plaintiffs' suit is not initiated for any proper purpose but, rather, is utilizing environmental laws to try to economically coerce and/or otherwise constrain the lawful conduct and pursuits of answering Defendants herein.

BY WAY OF NINTH AFFIRMATIVE DEFENSE, answering Defendants herein allege:

107.

Plaintiffs' claims are barred in whole or in part by the doctrine of laches.

BY WAY OF TENTH AFFIRMATIVE DEFENSE, answering Defendants herein allege:

108.

Plaintiffs' claims are barred in whole or in part by the applicable time limited by statute.

BY WAY OF ELEVENTH AFFIRMATIVE DEFENSE, answering Defendants herein allege:

109.

Defendant Ashland Gun Club hereby incorporates by reference all defenses alleged by Defendant City of Ashland in their answer as if fully set forth herein verbatim.

BY WAY OF COUNTERCLAIM, answering Defendants herein allege:

110.

Upon prevailing on any or all of Plaintiffs' environmental claims, answering Defendants should be awarded their costs, disbursements and attorneys' fees as may be available if A) any of Plaintiffs' claims are found to be frivolous, unreasonable, or without foundation, even if not brought in subjective bad faith, or B) if it is established that any claims were brought with subjective bad faith.

WHEREFORE, having fully answered Plaintiffs' complaint, answering Defendants pray that the court dismiss Plaintiffs' complaint with prejudice and that answering Defendants be awarded their costs, disbursements, including reasonable attorneys' fees through trial and upon any appeal therefrom and for such other and further relief as the Court deems just and equitable.

DATED this 17th day of February, 2012.

By: /s/ Joseph E. Kellerman
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